

Federal Communications Commission

§ 76.970

the cable system's future franchise fee payments.

[58 FR 29753, May 21, 1993, as amended at 59 FR 17975, Apr. 15, 1994]

§ 76.962 Implementation and certification of compliance.

(a) *Implementation.* A cable operator must implement remedial requirements, including prospective rate reductions and refunds, within 60 days from the date the Commission releases an order mandating a remedy.

(b) *Certification of compliance.* A cable operator must certify to the Commission its compliance with any Commission order mandating remedial requirements. Such certification shall:

(1) Be filed with the Commission within 90 days from the date the Commission releases an order mandating a remedy;

(2) Reference the applicable Commission order;

(3) State that the cable operator has complied fully with all provisions of the Commission's order;

(4) Include a description of the precise measures the cable operator has taken to implement the remedies ordered by the Commission; and

(5) Be signed by an authorized representative of the cable operator.

§ 76.963 Forfeiture.

(a) If any cable operator willfully fails to comply with the terms of any Commission order, including an order mandating remedial requirements after a finding of unreasonable cable programming service or equipment rates, or any Commission rule, the Commission may, in addition to other remedies, impose a forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b).

(b) A cable operator shall not be subject to forfeiture because its rate for cable programming service or equipment is determined to be unreasonable.

§ 76.964 Written notification of changes in rates and services.

(a) In addition to the requirement of § 76.309(c)(3)(i)(B) regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall

give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, changes in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. Notices to subscribers shall inform them of their right to file complaints about changes in cable programming service tier rates and services, shall state that the subscriber may file the complaint within 90 days of the effective date of the rate change, and shall provide the address and phone number of the local franchising authority.

(b) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable means at its sole discretion.

(c) Notwithstanding any other provision of Part 76, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

[61 FR 18979, Apr. 30, 1996]

§ 76.970 Commercial leased access rates.

(a) Cable operators shall designate channel capacity for commercial use by persons unaffiliated with the operator in accordance with the requirement of 47 U.S.C. 532. For purposes of 47 U.S.C. 532(b)(1)(A) and (B), only those channels that must be carried pursuant to 47 U.S.C. 534 and 535 qualify as channels that are required for use by Federal law or regulation.

(b) The maximum commercial leased access rate that a cable operator may charge is the highest implicit fee charged any unaffiliated programmer (excluding leased access programmers, non-retransmission consent broadcasters and public, educational and governmental access programmers)

within the same programming category.

(c) The per subscriber implicit fee charged an unaffiliated programmer shall be calculated by determining the monthly price a subscriber pays to view the programming of the unaffiliated programmer and subtracting the monthly price per subscriber that the operator pays to carry the programming of the unaffiliated programmer. The implicit fee is determined by multiplying the per subscriber implicit fee by:

(1) If the leased access programming is carried on a programming tier, the number of subscribers that subscribe to the programming tier on which the leased access programming is carried; or

(2) If the leased access programming is carried as a premium service, the average number of subscribers that subscribe to unaffiliated non-leased access programming services that are carried as premium services. The implicit fee for a contracted service may not include fees, stated or implied, for services other than the provision of channel capacity (e.g., billing and collection, marketing, or studio services).

(d) For each of the three programming categories as defined in paragraph (f) of this section, the highest implicit fee charged any unaffiliated programmer (excluding leased access programmers, non-retransmission consent broadcasters and public, educational and governmental access programmers) in each category shall be the maximum monthly leased access rate per subscriber that the operator could charge a commercial leased access programmer in the same category. The highest implicit fee shall be based on contracts in effect in the previous calendar year. Maximum rates for shorter periods can be calculated either by prorating the monthly maximum rate uniformly, or by developing a schedule of and applying different rates for different times of day, provided that the total of the rates for a 24-hour period does not exceed the maximum rate for one day of a full-time leased access channel (prorated evenly from the monthly rate derived in accordance with paragraphs (b), (c), and (d) of this section).

(e) Within seven business days of a prospective leased access programmer's request, a cable system operator must provide such programmer with the following information:

(1) A complete schedule of the operator's full-time and part-time leased access rates;

(2) How much of the operator's leased access set-aside capacity is available;

(3) Rates associated with technical and studio costs; and

(4) If specifically requested, a sample leased access contract. Requests under this paragraph (e) may be made by any reasonable means (e.g., in person, by telephone, by facsimile or by mail), and the information shall be deemed provided when the operator sends or gives the information to the programmer. Operators shall maintain, for Commission inspections, sufficient supporting documentation to justify the scheduled rates, including supporting contracts, calculations of the implicit fees, and justifications for all adjustments.

(f) For purposes of paragraph (b) of this section there are three program categories:

(1) Programming for which a per-event or per channel charge is made;

(2) Programming more than fifty percent of the capacity of which is used to sell products directly to customers; and

(3) All other programming.

[58 FR 29753, May 21, 1993, as amended at 61 FR 16400, Apr. 15, 1996]

EFFECTIVE DATE NOTE: At 61 FR 16400, Apr. 15, 1996, in § 76.970, paragraph (e) was revised. Paragraph (e) contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 76.971 Commercial leased access terms and conditions.

(a)(1) The cable operator and unaffiliated commercial leased access user may negotiate channel placement and tier access for leased programming, taking into account:

(i) The nature of the service (pay or general distribution channel, complete channel or individual program);